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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

D.C.,

Defendant and Appellant.

E071947

(Super.Ct.No. FELJS18000151)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant D.C. appeals from the trial court's order denying her petition to overturn the Board of Prison Terms' finding she was a mentally disordered offender pursuant to Penal Code sections 2962 and 2966. Based on our independent review of the record, we find no error and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

In July 2015, defendant attacked a random stranger in Los Angeles County. Specifically, defendant approached a vehicle waiting to make a right turn and thrust a knife through an open window at the driver. Defendant reached inside the vehicle and swung the knife at the victim in a downward motion. The victim, afraid for her safety, accelerated and called the police.

After criminal proceedings were brought against defendant, her trial counsel declared a doubt as to her competency pursuant to Penal Code section 1368, and a doctor was appointed to evaluate her. The examining doctor found that defendant "was clearly psychotic, highly delusional, and responding to internal stimuli." Criminal proceedings were thereafter suspended, and defendant was placed at Patton State Hospital (Patton) for almost a year to restore her competency. While at Patton, defendant was found to be "irritable, hostile, paranoid, and delusional." Defendant's mental health records also

show that, while on the streets, she “had numerous encounters with Los Angeles Police Department, Mental Health Unit.”

After her competency was restored, in May 2017, defendant was convicted of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(4), and sentenced to state prison for four years. While in prison, defendant continued to deny she had a mental illness and appeared to “respond to internal stimuli, and she had [a] blunted affect.” Defendant was subsequently confined to Patton.

On August 20, 2018, defendant, in propria persona, filed a petition and order for appointment of counsel and a hearing to challenge the Board of Prison Terms’ determination she met the criteria for a mentally disordered offender pursuant to Penal Code sections 2962 and 2966. Defendant was thereafter appointed counsel.

On November 9, 2018, defendant waived her right to a jury and requested a court trial.

On December 11, 2018, a bench trial was conducted. Without objection, the People offered documentary exhibits, including a prior probation report and five doctors’ reports, four of which concluded defendant met the criteria for treatment pursuant to Penal Code section 2962. The prosecutor noted that defendant had a “significant criminal history” with poor performance on supervision and that she was not complying with her treatment. The prosecutor also stated: “She refuses her medication. She has no insight into her mental illness. She has demonstrated impulsivity in the commitment offense, as well as her behavior at the hospital, and she has a history of substance abuse.”

Defense counsel pointed out that the Department of State Hospital's evaluator, who is the "state hospital's own doctor," concluded that defendant did not meet the criteria for treatment of a mentally disordered offender. Defense counsel asserted that the state's doctor found defendant was "likely sophisticated enough to manipulate the mental health system for her own purposes" and that defendant did not have a severe mental disorder. Defense counsel also noted that defendant had been incarcerated for five years, two at Patton, and that she was using a walker. Defense counsel did not believe defendant would be a "substantial danger of physical harm to others."

Defendant spoke during the proceedings and claimed "they" were not telling the truth. The court asked whether defendant would like to testify, and defense counsel replied, "No." The court thereafter took the matter under submission.

On December 19, 2018, the trial court found beyond a reasonable doubt that defendant met the criteria for treatment pursuant to Penal Code sections 2962 and 2966. Specifically, the court found that the People had proven beyond a reasonable doubt that (1) defendant suffered from a severe mental disorder, psychotic disorder or schizophrenia; (2) defendant had used, threatened, or implied a threat of force or violence or caused great bodily injury when she committed her commitment offense on July 30, 2015; (3) defendant's severe mental disorder was a cause or aggravating factor of the commitment offense; (4) defendant's severe mental disorder was not in remission since she continued to present with "blunted affect, odd mannerisms, responding to internal stimuli, paranoia, delusions, evasiveness, circumstantial and tangential thought

processes”; (5) defendant’s severe mental disorder cannot be kept in remission without treatment; (6) defendant had been in treatment for a severe mental disorder for 90 days or more within the year prior to parole or release and she had been receiving treatment “at the Triple CMS level from June 26, 2017 or 168 days of treatment”; and (7) defendant presents a substantial danger of physical harm to others due to her severe mental disorder.

The court also noted defendant’s lengthy criminal history, which included offenses for prostitution, vehicle theft, disorderly conduct, robbery, assault, trespass, assault for mayhem or rape, kidnapping, fighting, transportation or sale of a controlled substance, battery, grand theft person, and injury on transport personnel. The court further noted defendant’s long history of abusing controlled substances and alcohol, which “exacerbates symptoms of severe mental disorder.” Finally, the court stated that defendant’s severe mental disorder was not in remission and that defendant had no insight into her mental illness and the impact her symptoms had on her behavior. The court further asserted that defendant did not believe she had a mental illness, did not know why she was sent to the state hospital, and had no intention of taking her psychotropic medication. For all of the above reasons, the court found true the criteria for treatment under Penal Code sections 2962 and 2966 beyond a reasonable doubt and denied defendant’s petition.

On January 8, 2019, defendant timely filed a notice of appeal from the order extending her commitment under the Mentally Disordered Offender Act (Pen. Code, § 2960, et seq.).

III

DISCUSSION

After defendant appealed, upon her request, this court appointed counsel to represent her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and she has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV
DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.